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15 *UnitedHealth Group Inc. and*
16 *UnitedHealthcare, Inc.*

17 UNITED STATES DISTRICT COURT
18 CENTRAL DISTRICT OF CALIFORNIA

19 ESTATE OF BIBI AHMAD,
20 individually and on behalf of all others
21 similarly situated,

22 Plaintiff,

23 v.

24 UNITEDHEALTH GROUP INC.,
25 UNITED HEALTHCARE INC., and
26 DOES 1-5, inclusive,

27 Defendants.

28 CASE NO. 8:23-CV-02303-MRA-DFM

29 **DECLARATION OF KAHN
30 SCOLNICK IN SUPPORT OF
31 DEFENDANTS' OPPOSITION TO
32 PLAINTIFF'S EX PARTE
33 APPLICATION**

34 **Hearing:**

35 Date: TBA
36 Time: TBA
37 Place: Courtroom 10B
38 Judge: Hon. Mónica Ramírez
39 Almadani

DECLARATION OF KAHN SCOLNICK

I, Kahn Scolnick, hereby declare and state:

1. I am an attorney licensed to practice law before this Court and all courts of the State of California. I am a partner with the law firm of Gibson, Dunn & Crutcher LLP and counsel of record for Defendants UnitedHealth Group Inc. and UnitedHealthcare Inc. (collectively “United”) in the above-captioned case.

2. I make this Declaration in support of United's concurrently filed Opposition to Plaintiff's ex parte application.

3. On Friday, February 23, 2024, I emailed Plaintiff's counsel to set-up a time to meet-and-confer regarding Defendants' anticipated motion to dismiss Plaintiff's complaint pursuant to Rule 12(b)(6). In that email, I offered four potential dates and times to Plaintiff's counsel. Later that same day, I sent another email to Plaintiff's counsel, providing slightly adjusted windows of availability.

4. After Plaintiff's counsel did not respond to my emails, I sent her a follow-up email on Monday, February 26, 2024 to check-in and see if any of the four windows of availability would work for her to discuss Defendants' anticipated motion to dismiss.

5. Later that day, Plaintiff's counsel responded that she was "dealing with an urgent filing due today and a hearing in the morning" and asked to "touch base after that[.]"

6. I replied within minutes, asking Plaintiff's counsel to "please let us know" what might work for her once she freed up the following day.

7. The next day on Tuesday, February 27, 2024 at 1:34 PM, Plaintiff's counsel responded to my email, asking to "meet and confer by email."

8. Later that day, I replied to Plaintiff's counsel, explaining the Local Rules of the Central District instruct that the meet-and-confer should preferably take place in

1 person, but that Zoom is an often-used substitute. I also explained that “the court
2 might be concerned if we don’t at least connect via Zoom.”

3 9. Plaintiff’s counsel responded the next day on February 28, 2024, asking if
4 10 AM on Thursday, February 29 would work to meet-and-confer. In response, I sent
5 a Zoom invite to Plaintiff’s counsel for 10 AM on Thursday, February 29.

6 10. An hour before the meet-and-confer was set to take place on February 29,
7 2024, Plaintiff’s counsel sent me an email, explaining she had a “personal emergency”
8 that precluded her attendance at the meeting.

9 11. I replied promptly that same day, asking if Plaintiff’s counsel might be
10 able to do a Zoom call the following day.

11 12. On Friday, March 1, 2024, Plaintiff’s counsel sent an email, asking
12 Defendants again to “meet and confer by email.”

13 13. I replied that day, requesting that I give Plaintiff’s counsel a call that
14 morning instead and explaining again that the Court expects some actual interaction
15 between the parties rather than just emails. I also offered an alternative call time, but
16 also stated that Defendants would “appreciate something beyond just exchanging
17 emails.”

18 14. Plaintiff’s counsel did not respond to my March 1, 2024 email.

19 15. On March 4, 2024, I followed-up with Plaintiff’s counsel via email again,
20 asking if she was available for a call or Zoom meeting that day or the next.

21 16. Later that same day, Plaintiff’s counsel replied asking if “there is a reason
22 why we have not been able to meet and confer by email? That’s been requested a
23 number of times.”

24 17. I replied within three minutes and explained for the third time that “the
25 court rules envision some real dialogue before we file” and that an email meet-and-
26 confer was not sufficient. I also requested that if Plaintiff’s counsel was still unwilling
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1 to meet-and-confer via telephone or Zoom, that she please let us know what
2 information she wanted via email.

3 18. Plaintiff's counsel did not respond to my March 4 email.

4 19. Attached as **Exhibit 1** is a true and correct copy of the parties' email
5 exchange reflecting Defendants' attempts to meet-and-confer with Plaintiff's counsel
6 via telephone or Zoom regarding Defendants' then-anticipated motion to dismiss, as
7 described in paragraphs 3 through 17 above.

8 20. On Friday, March 29, 2024, I once again attempted to meet-and-confer
9 with Plaintiff's counsel, this time over Defendants' anticipated motion to stay
10 discovery pending the Court's resolution of Defendants' motion to dismiss.

11 21. On April 1, 2024, Plaintiff's counsel responded that she would like to try
12 to meet-and-confer during the afternoon of the following day, April 2, 2024. I
13 responded within the hour, asking what telephone number I should use to call
14 Plaintiff's counsel and explained that I would try to call her at 1 PM on April 2, 2024.

15 22. Plaintiff's counsel did not respond to my email. Instead, during the
16 morning of April 2, 2024, Plaintiff's counsel sent an email expressing that the
17 telephone number she had to contact me did not seem to work, and asked if there was a
18 better phone number to call for the meeting.

19 23. I responded within 30 minutes, explaining that the telephone number
20 Plaintiff's counsel had for me did work and that I had received a voicemail she left
21 approximately 20 minutes prior. I also explained that if 1 PM still worked for the
22 meet-and-confer, that I would call her at that time at her office number.

23 24. Attached as **Exhibit 2** is a true and correct copy of the parties' email
24 exchange reflecting Defendants' attempts to meet-and-confer with Plaintiff's counsel
25 regarding Defendants' then-anticipated motion to stay discovery, as described in
26 paragraphs 20 through 23 above.

1 25. On April 2, 2024, instead of attending the meeting herself, Plaintiff's
2 counsel had an attorney named Ally Alain call on her behalf. Ms. Alain did not want
3 to be identified as counsel of record for Plaintiff and informed me that she was helping
4 Plaintiff's counsel, but was not affiliated with Plaintiff's counsel's law firm. During
5 the call, it was apparent that Ms. Alain knew nothing about Plaintiff's case. Ms. Alain
6 informed me on the call that she took detailed notes of Defendants' position on the
7 motion to stay discovery and would get back to Defendants on whether Plaintiff would
8 stipulate to stay discovery.

9 26. Defendants ultimately filed their motion to stay discovery after Plaintiff's
10 counsel followed up in an email declining to agree to stay discovery. Dkt. 22.

11 27. On Wednesday, May 22, 2024, I emailed Plaintiff's counsel to ask how
12 she wanted to meet-and-confer with respect to the Rule 26(f) conference and offered to
13 meet-and-confer via Zoom or phone call the next day.

14 28. Plaintiff's counsel responded that her "records and memorandum show
15 that we held a substantive discussion about the proposed discovery and Rule 26(f)
16 conference on April 2, 2024."

17 29. The meet-and-confer with Ms. Alain on April 2, 2024 was not a Rule
18 26(f) conference. It was solely about Defendants' motion to stay discovery, Plaintiff's
19 counsel was not on the call, and Ms. Alain knew very little about the case and merely
20 took notes.

21 30. On May 23, 2024, Ms. Alain called Defense counsel to discuss the Rule
22 26(f) issues. Plaintiff's counsel was not on the phone.

23 31. On Saturday, May 25, 2024 during Memorial Day weekend, Plaintiff's
24 counsel emailed me to request that Defendants stipulate to certain facts presented in
25 Defendants' discovery responses, on the theory that such extrinsic evidence would be
26 material to this Court resolving Defendants' pending motion to dismiss. Plaintiff's
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1 counsel explained that if Defendants would not stipulate to Plaintiff's request, Plaintiff
2 would seek ex parte relief from the Court.

3 32. On Tuesday, May 28, 2024, at 8:01 AM, Plaintiff sent a follow-up email,
4 checking-in on the status of her request for a stipulation.

5 33. Three minutes later on at 8:04 AM, I sent an email back to Plaintiff's
6 counsel, explaining that because I had received her first email over the holiday
7 weekend, I had not yet discussed the stipulation with my clients. I also informed
8 Plaintiff's counsel that I would get back to her as soon as possible.

9 34. Later that same day at 4:13 PM, I sent Plaintiff's counsel an email,
10 explaining Defendants' position on Plaintiff's request for a stipulation and threatened
11 ex parte application.

12 35. Plaintiff's counsel did not reply to my email.

13 36. Attached hereto as **Exhibit 3** is a true and correct copy of the parties'
14 emails reflecting the correspondence between Plaintiff's counsel and myself regarding
15 Plaintiff's ex parte application, as described in paragraphs 27 through 34 above.

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17 I declare under penalty of perjury of the laws of the United States that the
18 foregoing is true and correct and that this Declaration was executed on May 31, 2024
19 in Los Angeles, California.

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21 By: /s/ Kahn Scolnick
22 Kahn Scolnick
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